

BEFORE THE SUPERINTENDENT OF BANKING
OF THE STATE OF IOWA

IN THE MATTER OF:)	DIA Nos. 12IDB002, 13IDB001
)	IDOB File No.
)	2012-NRR 2003-0154
CashCall, Inc.)	
1600 South Douglass Road)	MOTION TO AMEND
Anaheim, CA 92806,)	STATEMENT OF CHARGES
)	
Respondent.)	

COMES NOW the State of Iowa, and moves to amend the Statement of Charges filed against Respondent as set forth below, and in support thereof states as follows:

1. The State seeks to enlarge the factual basis supporting the charges to address factual nuances that were erroneously excluded from the Statement of Charges filed in this case and to add an additional count to the charges against the Respondent.
2. The original Statement of Charges, a copy of which is attached as Exhibit A, was filed on November 26, 2012. The hearing is scheduled for March 18, 2013.
3. The Iowa Supreme Court allowed a similar amendment to the statement of charges in the case of Rosen v. Board of Medical Examiners, 539 N.W.2d 345 (Iowa 1996). In that case the Supreme Court allowed a request for amendment to enlarge the factual basis supporting the charges, even though it was made in the course of the hearing itself.
4. Respondent will suffer no prejudice to the preparation of its defense in this matter because the revised factual allegations are based on the way the Respondent has organized its business and contractual relationships, which is well known to the Respondent. In addition, the new count is based on actions taken against the Respondent in other states that have progressed while this case has been pending and of which the

Respondent is well aware. Finally, the concepts addressed by the revision to the Statement of Charges are already addressed in license denial contested case involving Respondent's application for additional licenses ("license denial") which has already been consolidated with the hearing on the Statement of Charges.

5. It is in the interest of justice to allow this amendment. The revised factual allegations concern Respondent's ability to act as a regulated loan company in accordance with the laws governing his business, and therefore affect the public's welfare. And the amendment merely provides clarification of the evidence to support the counts already charged and an additional count based on updated information regarding matters that are addressed in the license denial. It would be unnecessary expenditure of the time and resources of both parties and the Administrator to require the Administrator to initiate an entirely new proceeding in this matter on the basis of the additional evidence.

6. Amendments to the statement of charges may be allowed in the discretion of the presiding officer. 187 IAC 11.11(3).

7. The opening paragraph of the Statement of Charges should be amended to read as follows:

COMES NOW the Iowa Superintendent of Banking ("Superintendent") and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2) and 187 IAC 11.5. CashCall, Inc. ("Respondent") was issued Iowa Nonresident Regulated Loan Company license No. NRR 2003-0154 on October 23, 2003. That license is active through December 31, 2013 and is subject to renewal on or before December 1, 2013.

8. Section A should be amended to add the following new Count VI and paragraph 14A:

Count VI

14A. Respondent is charged under Iowa Code § 536.9(1)(b) (2011) on the grounds that a fact or condition exists which would have warranted the Superintendent to refuse to originally issue a license to the Respondent.

9. Paragraph 16 of Section B of the current Statement of Charges should be amended to state as follows:

16. The loan review period for the examination was January 1, 2009 through July 6, 2012. The examiner reviewed 52 of the 1231 loans to Iowa consumers for which Respondent provides servicing and which Respondent either made as the de facto lender and/or that Respondent or its affiliate company purchased from Western Sky Financial, LLC.

10. Section B of the current Statement of Charges should be amended to include the following new paragraphs:

25. Several other states have brought actions against Respondent alleging it has violated various laws related to its business. These allegations include, but are not limited to unfair debt collection practices, charging and/or collecting excessive interest rates; failing to accurately disclose actions brought against it by other states; failing to operate its business honestly, fairly, and within the purpose of the law; failing to comply with directives and subpoenas; and using an unlicensed trade name.

26. Other states that have brought actions against Respondent include Alaska, California, Florida, Kansas, Maryland, Washington, and West Virginia).

27. The State of Maryland has revoked Respondent's Maryland mortgage lending license.

28. An Order on the State of Washington's Motion for Partial Summary Judgment in the administrative action it brought against Respondent has been issued and Respondent characterizes this order as a revocation of its Washington Consumer Loan Act license.

29. The numerous actions taken by other states against Respondent demonstrate Respondent's experience, character, and general fitness do not warrant the belief that the Respondent's business will be operated lawfully, honestly, fairly, and efficiently within the purposes of Iowa Code chapter 536. As a result, a fact or condition exists which would have warranted the Superintendent to refuse to originally issue a license to the Respondent.

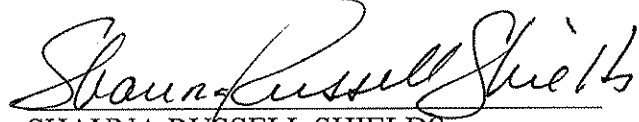
11. Paragraphs 25 and 26 should be renumbered accordingly.

WHEREFORE, the State of Iowa requests the Superintendent to amend the

charges in the manner and for the reasons set forth above.

Respectfully submitted,

THOMAS J. MILLER
IOWA ATTORNEY GENERAL

A handwritten signature in black ink, reading "Shauna Russell Shields". The signature is fluid and cursive, with the last name "Shields" being more prominent and larger than the first and middle names.

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ATTORNEY FOR RESPONDENT

BEFORE THE SUPERINTENDENT OF BANKING
OF THE STATE OF IOWA

IN THE MATTER OF:)	IDOB File No.
)	2012-NRR 2003-0154
)	
CashCall, Inc.)	AMENDED
1600 South Douglass Road)	STATEMENT OF CHARGES
Anaheim, CA 92806,)	
)	
Respondent.)	
)	

TO THE ABOVE-NAMED RESPONDENT:

COMES NOW the Iowa Superintendent of Banking ("Superintendent") and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2) and 187 IAC 11.5. CashCall, Inc. ("Respondent") was issued Iowa Nonresident Regulated Loan Company license No. NRR 2003-0154 on October 23, 2003. That license is active through December 31, 2013, and is subject to renewal on or before December 1, 2013.

TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing will be at the time and place designated in the Notice of Hearing to which this Statement of Charges is attached.
2. Answer. Within twenty (20) days of the date you are served this Statement of Charges you are required by 187 Iowa Administrative Code 11.2(2) to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.
3. Presiding Officer. An Administrative Law Judge ("ALJ") with the Iowa Department of Inspections and Appeals' Administrative Hearings Division shall serve as presiding officer. The ALJ will issue a proposed decision, and the proposed decision will

become a final decision of the agency unless the decision is appealed in accordance with 187 IAC 11.27(1) or the Superintendent initiates a review of the proposed decision in accordance with 187 IAC 11.27(2).

4. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 187 Iowa Administrative Code chapter 11. At hearing, you will be allowed the opportunity to present evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 187 Iowa Administrative Code 11.17. The hearing will be open to the public.

5. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Iowa Department of Inspections and Appeals' Administrative Hearings Division at the following address:

Administrative Law Judge
Re: In the Matter of CashCall, Inc.
IDOB File No. 2012-NRR 2003-0154
Administrative Hearings Division
Wallace State Office Building – 3rd Floor
502 E. 9th St.
Des Moines, IA 50319

Filing pleadings with the Department of Inspections and Appeals' Administrative Hearings Division shall constitute filing with the division pursuant to 187 IAC 11.12(3). Copies of all pleadings should be provided to counsel for the State at the following address:

Shauna Russell Shields

Assistant Attorney General
c/o Iowa Division of Banking
200 East Grand Avenue, Suite 300
Des Moines, Iowa 50309

6. Communications. You may not contact the Superintendent by phone, letter, facsimile, e-mail, or in person about this Statement of Charges. The Superintendent may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Superintendent's office and serve upon all parties in the case. You should direct any questions to Rodney Reed, the Iowa Division of Banking's Finance Bureau Chief at 515-281-4014 or to Assistant Attorney General Shauna Russell Shields at 515-281-4014.

LEGAL AUTHORITY AND JURISDICTION

7. Jurisdiction. The Superintendent has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 536.

8. Legal Authority. If any of the allegations against you are founded, the Superintendent has authority to take disciplinary action against you under Iowa Code chapters 17A and 536 and 187 Iowa Administrative Code chapter 15.

9. Default. If you fail to appear at the hearing, the Superintendent may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code section 17A.12(3) and 187 Iowa Administrative Code 11.22.

A. SECTIONS OF STATUTES AND RULES INVOLVED

Count I

10. Respondent is charged under Iowa Code § 536.9(1)(a) (2011) with violating a provision of Iowa Code chapter 536, a rule adopted under chapter 536, and a

state or federal law applicable to the conduct of its business by violating, or by aiding and abetting the violation of Iowa Code § 536.13 and 187 IAC 187.15(5) by charging interest rates exceeding the maximum permitted by Iowa Code.

Count II

11. Respondent is charged under Iowa Code § 536.9(1)(a) (2011) with violating a state or federal law applicable to the conduct of its business by violating, or by aiding and abetting the violation of Iowa Code §§ 536.13 and 537.2401(3) by calculating interest charges using a 360-day year rather than a 365-day year.

Count III

12. Respondent is charged under Iowa Code § 536.9(1)(a) (2011) with violating a state or federal law applicable to the conduct of its business by violating, or by aiding and abetting the violation of Iowa Code §§ 536.13 and 537.2502(1)(b) by charging borrowers a late fee greater than the maximum late fee of 5% of the unpaid amount of the installment or \$15.00.

Count IV

13. Respondent is charged under Iowa Code § 536.9(1)(a) (2011) with violating a state or federal law applicable to the conduct of its business by violating, or by aiding and abetting the violation of Iowa Code §§ 536.13 and 537.2501 by charging borrowers an insufficient funds fee which was not included in the finance charge nor specifically permitted as an additional charge by Iowa law.

Count V

14. Respondent is charged under Iowa Code § 536.9(1)(a) (2011) with violating a state or federal law applicable to the conduct of its business by violating, or by

aiding and abetting the violation of Iowa Code §§ 536.13 and 537.2510 by assessing borrowers a prepaid finance charge of which no portion is rebated upon prepayment.

Count VI

14A. Respondent is charged under Iowa Code § 536.9(1)(b) (2011) on the grounds that a fact or condition exists which would have warranted the Superintendent to refuse to originally issue a license to the Respondent.

B. FACTUAL CIRCUMSTANCES

15. The Superintendent, through Iowa Division of Banking Finance Bureau examiner Randy Johnson, conducted an examination of Respondent's business beginning June 20, 2012 pursuant to the provisions of Iowa Code §536.10.

16. The loan review period for the examination was January 1, 2009 through July 6, 2012. The examiner reviewed 52 of the 1231 loans to Iowa consumers for which Respondent provides servicing and which Respondent either made as the de facto lender and/or that Respondent or its affiliate company purchased from Western Sky Financial, LLC.

17. Respondent's loans reviewed by the examiner charged the borrowers interest rates ranging from 89% to 169%. The rates on all loans reviewed exceeded the maximum interest rate permitted by Iowa Code § 536.13 and 187 IAC 15(5) by a significant amount.

18. All of Respondent's loans reviewed by the examiner calculated interest charges using a 360 day per year basis.

19. Respondent's contract provides for a late fee of \$29 when a borrower's payment is 15 days late.

20. Respondent collected a \$29 late fee from borrowers in 15 of the 52 (28.84%) loan files reviewed by the examiner.

21. Respondent charged insufficient fund fees borrowers in 17 of the 52 (32.69%) files reviewed by the examiner. But, Respondent had not included the insufficient funds fees in the calculation of the finance charge, and the Iowa Consumer Credit Code does not specifically authorize an additional charge for an insufficient fund fee.

22. Respondent failed to rebate any portion of the prepaid finance charge in any of the 16 loan files reviewed by the examiner where the borrower repaid the loan early.

23. The Banking Division provided the Respondent with an opportunity to respond to the examiner's report of examination and requested the Respondent to correct the violations noted in the report.

24. The Respondent refused to make any of the requested corrections and instead asserted an untenable legal theory that the loans in question are not subject to Iowa law.

25. Several other states have brought actions against Respondent alleging it has violated various laws related to its business. These allegations include, but are not limited to unfair debt collection practices, charging and/or collecting excessive interest rates; failing to accurately disclose actions brought against it by other states; failing to operate its business honestly, fairly, and within the purpose of the law; failing to comply with directives and subpoenas; and using an unlicensed trade name.

26. Other states that have brought actions against Respondent include Alaska,

California, Florida, Kansas, Maryland, Washington, and West Virginia).

27. The State of Maryland has revoked Respondent's Maryland mortgage lending license.

28. An Order on the State of Washington's Motion for Partial Summary Judgment in the administrative action it brought against Respondent has been issued and Respondent characterizes this order as a revocation of its Washington Consumer Loan Act license.

29. The numerous actions taken by other states against Respondent demonstrate Respondent's experience, character, and general fitness do not warrant the belief that the Respondent's business will be operated lawfully, honestly, fairly, and efficiently within the purposes of Iowa Code chapter 536. As a result, a fact or condition exists which would have warranted the Superintendent to refuse to originally issue a license to the Respondent.

SETTLEMENT

30. This matter may be resolved by settlement agreement. The settlement process is governed by Iowa Code section 17A.10. If you are interested in pursuing settlement of this matter, please contact Rodney Reed or Shauna Russell Shields at 515-281-4014.

F. PROBABLE CAUSE FINDING

31. On this 26th day of November, 2012, the Superintendent found probable cause to file this Statement of Charges.

James M. Schipper
Superintendent of Banking

Copies to:

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